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File No. O. Ferries/46.

Legal Dept.

A **BRANCH**

Subject:— Opinions under the Bombay Ferries Act-1868

File No. O Ferries/46.

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L.D.R.I.No. 6020/ 6-7-46.

Submitted.

2. The P.W.D. has requested the Selr. to Govt. in L.D. to advise on the point whether amendments can be made in the rules without the previous approval of the authority who approved the original rules. The Selr. has transferred the case to A Branch for disposal.

3. The facts underlying the presnent reference are briefly as under :-

In 1925, it appears, the Joint Committee for the management and supervision of the public ferry-service plying on the Narmada near Breach sent the rules framed by it under Sec. 12 of the Bombay Ferries and Inland Vessels Act, 1868, for the Commissioner, N.D.'s sanction who duly approved the same. In 1935, the Joint Committee, it appears, framed fresh rules but without obtaining the previous approval of the Commissioner. Thereafter rule 36 of the said Rules was amended so as to limit the ferry contractor's liability to supply the boats within the ferry-boat and not for places beyond the beat. The question now for the consideration of the R.L.A. is whether such an amendment of rule 36 is legally valid since it was made by the Joint Committee without the previous approval of the Commissioner, N.D.

4. Sec. 2A of the Bombay Ferries and Inland Vessels Act, 1868, provides for the vesting of public ferries in local bodies whereupon the local bodies would be entitled to exercise in respect of such ferries all the powers specified in the Schedule to the act viz the powers of the Provincial Govt. and the Collector of the District in respect of the various provisions of the Act, including the powers under sec. 12 of the Act under which the Collector is empowered to frame rules for the regul-ation of such ferries, subject to such general directions as the Provincial Government from time to time may issue.

Under sec. 17 it is provided that the provincial Government may delegate under such restrictions as it may deem fit, any of the powers conferred on it by the Act, ex-officio, to any Commissioner, Collector, Magistrate or other person. It appears that the powers to give general directions under sec. 12 re. such rules were delegated by Govt. to the Commissioner under G.R.G.D. No. 1716, dated 11-7-1868. It is true that under sec. 21 of the Bombay General clauses Act, 1904 if the original rules made under any Bombay Act were to be made subject to the previous sanction of a prescribed authority, every amendment of these rules would require the previous sanction of that authority. However, sec. 12 of the Bombay Ferries and Inland Vessels Act, empowers the Collector (in turn the Local Bodies) to frame rules for the regulation of public ferries, subject to such General directions as the Provincial Government (the Commissioner) from time to time may issue. This means that the Local Bodies are not to obtain previous sanction to the rules but are to follow the general direction, if any, issued by Govt. or by any other authority to whom Govt. has delegated such powers (Pl. see para 3 of R.L.A's opinion No. 7270, dated 16-12-1935) In the present case. therefore, the ferry rules as revised in 1935 as well as the subsequent amendment of rule 36 cannot be said to be legally invalid inasmuch as they were adopted without obtaining previous sanction of the Commissioner. The view taken by the Commissioner, Northern Division, does not appear to be correct.

Id/- 2/8

I agree.

Section 12(b) of the Bombay Ferries and Inland Act, 1868, empowers the Collr. to make rules in respect of matters specified therein, subject to such general directions as the Provincial Government from time to time may issue.

It does not provide that the rules to be made shall be subject to the previous sanction or approval of the Provincial Government". The words "subject to such general directions as the Provincial Government from time to time may issue" are very wide. While they give Government power to issue directions on the subject either before the Collr. had made the rules or even after such rules are framed (see the words "from time to time"), they do not preclude the Collr. from acting without reference to Government in making the rules (cf. R.L.A's No. 7270 dated - 16-12-1935).

Since under section 2A the power to make rules under section 12 also vests in the Joint Committee, it is legally competent to make rules subject to such directions which the Commr. (to whom the powers of Government to issue directions have been delegated by Government) may issue. Section 12 does not provide for making rules "subject to the sanction or approval of the Government" whose powers are delegated to the Commr. Consequently the question of sanction of the Commr. does not arise, and rule 36 made without the Commr's sanction cannot be deemed to be invalid if it is not inconsistent with any directions issued by the Commr.

Id/- 5/8

I agree and suggest the following reply :-

By virtue of section 2-A of the Bombay Ferries Act, 1868 read with the Schedule thereto the powers of the Collector under section 12(b) vest in the Joint Committee to frame rules subject to the general directions of the Commissioner. The words "subject to the general directions" do not mean "with the previous approval". Consequently the rules framed by the Joint Committee in 1935 are intra vires provided they are in no way inconsistent with the

any, issued by the Commissioner

amendment of rule 36 of these rules would therefore require no previous sanction of the Commissioner and the amended rule would be legal provided it does not contravene the directions if any issued by the Commissioner from time to time.

Sd/- R.T.Kamarki
6/8

R.L.A. I a Sd/- P.N.[illegible] 20/8 /56.

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Office of the R.L.A.

By virtue of section 2A of the Bombay Ferries Act, 1868 read with the Schedule thereto the powers of the Collector under section 12(b) vest in the Joint Committee to frame rules subject to the general directions of the Commissioner. The words "subject to the general directions" do not mean "with the previous approval". Consequently the rules framed by the Joint Committee in 1935 are intra vires provided they are in no way inconsistent with the directions, if any, issued by the Commissioner. The amendment of rule 36 of these rules would therefore require no previous sanction of the Commissioner and the amended rule would be legal provided it does not contravene the directions if any issued by the Commissioner in time.

Id/- P.N.M.
22/8/46.

Remembrancer of Legal Affairs.

U.O.R. to G.D.No. 5947, dated the 27th August 1946.

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